MOTION FILED
MAR 0 1 2000

(2)

321No. 99-1292

In The

Supreme Court of the United States

October Term, 1999

UNITED STATES BAKERY, INC., D/B/A SNYDER'S BAKERY, INC., A FOREIGN CORPORATION,

Petitioner,

v.

JOHN SCHNEIDER, ET AL., INDIVIDUALLY AND ON BEHALF OF THE CLASS,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Washington (Division III)

MOTION FOR LEAVE TO FILE BRIEF, *AMICI CURIAE*, AND BRIEF OF *AMICI CURIAE*, AMERICAN BAKERS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS & SNACK FOOD ASSOCIATION, IN SUPPORT OF THE PETITIONER

PETER A. SUSSER
Counsel of Record
KATHERINE A. GOETZL
LITTLER MENDELSON, P.C.
1225 I Street, N.W.
Suite 1000
Washington, D.C. 20005
(202) 842-3400

Counsel for *Amici Curiae*

Of Counsel:
JAN S. AMUNDSON
QUENTIN RIEGEL
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Penn. Ave., N.W.
Washington, D.C. 20004
(202) 637-3000

No. 99-1292

In The
Supreme Court of the United States
October Term, 1999

UNITED STATES BAKERY, INC., D/B/A SNYDER'S BAKERY, INC., A FOREIGN CORPORATION,

Petitioner,

v.

JOHN SCHNEIDER, ET AL., INDIVIDUALLY AND ON BEHALF OF THE CLASS,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Washington (Division III)

MOTION FOR LEAVE TO FILE BRIEF, *AMICI CURIAE*

Pursuant to Rule 37.2(b) of this Court, the American Bakers Association ("ABA"), the National Association of Manufacturers ("NAM") and the Snack Food Association ("SFA"), by their undersigned counsel, hereby move for leave to file their brief as *Amici Curiae* in support of the Petitioner, United States Bakery, Inc. d/b/a Snyder's Bakery, Inc.* In support of their Motion, the ABA, NAM and SFA state:

---

* Prior to filing this Motion, the ABA, NAM and SFA sought the consent of both parties to the filing of its brief, as required by Rule 37.2 of this Court. The Petitioner consented to this request, however, the Respondents refused to consent, necessitating this Motion.

The ABA is the trade association that represents the nation's wholesale baking industry. Its membership consists of more than 300 wholesale bakery and allied services firms. These firms comprise companies of all sizes, ranging from family-owned enterprises to companies affiliated with Fortune 500 corporations. Together, these companies produce approximately 80 percent of the nation's baked goods. The members of the ABA collectively employ tens of thousands of employees nationwide in their production, sales, and distribution operations. The ABA, therefore, serves as the principal voice of the American wholesale bakery industry.

ABA members include the majority of Washington's wholesale baking companies, with over $268 million in annual sales statewide. These wholesale baking companies have over 90 facilities in Washington, including seven major bakeries and in excess of 80 distribution depots. ABA members in Washington employ more than 2,600 employees, including more than 850 driver-salespersons who cover nearly 800 sales routes throughout the state.

The National Association of Manufacturers – "18 million people who make things in America" – is the nation's largest and oldest multi-industry trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 11 additional offices across the country.

The Snack Food Association ("SFA") is the international trade association of the snack food industry representing snack manufacturers and suppliers to the snack industry since 1937. Over 800 snack food manufacturers and suppliers are members of SFA. SFA acts as the voice

for the snack food industry before government, compiles snack industry sales data and promotes increasing snack consumption, and provides technical support to its members through videos, seminars and publications. Retail sales of snack foods in the U.S. total more than $18 billion annually.

The ABA, NAM and SFA believe that their participation as *Amici Curiae* will benefit the Court in this proceeding. These organizations and their members bring a unique "hands-on" perspective to the consideration of the linkage between the distribution of products, and the labor contract mechanisms, including sales commission incentives, that commonly are incorporated into contracts with unions representing driver-salespersons. A number of member-companies of these national trade associations have implemented, through labor contracts, compensation and distribution arrangements that are similar to the mechanism challenged in this proceeding.

In this regard, members of each group also have experience with collective bargaining agreements that play an important role in defining the jobs and tasks of driver-salesperson positions. They have first-hand familiarity with the manner in which unions representing driver-salespersons consider those workers' duties before agreeing to contractual terms that define their jobs and set their compensation. They also have a national view of the manner in which challenges to collective bargaining agreements through state wage-hour claims, can and will have a dramatic and adverse effect on the stability of labor-management relations in a broad range of industries.

WHEREFORE, the ABA, NAM and SFA respectfully request that the Court grant their motion and permit their filing of the accompanying brief, *Amici Curiae*, in support of the Petitioner.

Respectfully submitted,

PETER A. SUSSER
Counsel of Record
KATHERINE A. GOETZL
LITTLER MENDELSON, P.C.
1225 I Street, N.W.
Suite 1000
Washington, D.C. 20005
(202) 842-3400

Counsel for *Amici Curiae*
American Bakers Association
National Association of Manufacturers
Snack Food Association

Of Counsel:
JAN S. AMUNDSON
QUENTIN RIEGEL
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Penn. Ave., N.W.
Washington, D.C. 20004
(202) 637-3000

March 1, 2000

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

INTEREST OF THE AMICI 1

INTRODUCTION AND SUMMARY OF ARGUMENT 5

ARGUMENT 10

A. The Washington Court Of Appeals' Analysis Of Whether Respondents' Claims Are Preempted By The LMRA Conflicts With Decisions Of This Court. 10

1. Early Interpretations Of Section 301 Of The LMRA By This Court Established That State Law Claims May Be Preempted. 10

2. Recent Analyses Of Section 301 Preemption By This Court Establish That State Claims That Are "Inextricably Intertwined" With Labor Contract Terms Or Require Their Interpretation Are Preempted. 11

3. The Washington Court of Appeals' Applied A Standard For Determining Section 301 Preemption Which Is Inconsistent With This Court's Decisions. 15

B. The Washington Court Of Appeals Erred In Concluding That The Respondents Seek To Vindicate Non-Negotiable Rights Under The WMWA. 17

CONCLUSION 20

TABLE OF AUTHORITIES

Federal Cases

Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) 12, 14, 16, 18

Caterpillar Inc. v. Williams, 482 U.S. 386 (1987) 13

Emporium Capwell Co. v. Western Addition Community Org., 420 U.S. 50 (1975) 18

International Brotherhood of Electrical Workers v. Hechler, 481 U.S. 851 (1987) 12, 13

Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399 (1988) 13, 14, 16

Livadas v. Bradshaw, 512 U.S. 107 (1994) 14, 15, 16

Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962) 10, 11, 18

Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965) 11

Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) 10

United Steelworkers v. Rawson, 495 U.S. 362 (1990) 14

State Cases

Ervin v. Columbia Distributing, Inc., 930 P.2d 947 (1997) 15, 16

Huntley v. Frito-Lay, Inc., 979 P.2d 488 (1999).....15, 16

Schneider, et al. v. United States Bakery, Inc., 976 P. 2d 134 (1999).....8, 15, 16

United Food and Commercial Workers Union Local 1001 v. Mutual Benefit Life Ins. Co., 925 P.2d 212 (1996)..15, 16

Statutes

29 U.S.C. § 159.....18

29 U.S.C. § 185.....passim

Revised Code of Washington § 49.46 (Minimum Wage Act).....passim

No. 99-1292

In The
Supreme Court of the United States
October Term, 1999

UNITED STATES BAKERY, INC., D/B/A SNYDER'S BAKERY, INC., A FOREIGN CORPORATION,

Petitioner,

v.

JOHN SCHNEIDER, ET AL., INDIVIDUALLY AND ON BEHALF OF THE CLASS,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Washington (Division III)

BRIEF OF *AMICI CURIAE*, AMERICAN BAKERS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS & SNACK FOOD ASSOCIATION, IN SUPPORT OF THE PETITIONER

INTEREST OF THE AMICI[1]

The American Bakers Association ("ABA") is the trade association that represents the nation's wholesale baking industry. Its membership consists of more than 300

---

[1] The ABA, the NAM and the SFA hereby certify, in accordance with Rule 37.6 of this Court, that no counsel for a party authored this brief in whole or in part. In addition, no person or entity, other than the ABA, the NAM and the SFA, their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

wholesale bakery and allied services firms. These firms comprise companies of all sizes, ranging from family-owned enterprises to companies affiliated with Fortune 500 corporations. Together, these companies produce approximately 80 percent of the nation's baked goods. The members of the ABA collectively employ tens of thousands of employees nationwide in their production, sales, and distribution operations. The ABA, therefore, serves as the principal voice of the American wholesale bakery industry.

ABA members include the majority of Washington's wholesale baking companies, with over $268 million in annual sales statewide. These wholesale baking companies have over 90 facilities in Washington, including seven major bakeries and in excess of 80 distribution depots. ABA members in Washington employ more than 2,600 employees, including more than 850 driver-salespersons who cover nearly 800 sales routes throughout the state. The driver-salespersons in Washington have an average tenure of nearly 10 years, and average weekly wages of $827.77. *All* of these driver-salespersons are covered under collective bargaining agreements negotiated between their employers and the International Brotherhood of Teamsters.

The National Association of Manufacturers – "18 million people who make things in America" – is the nation's largest and oldest multi-industry trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 11 additional offices across the country.

The Snack Food Association ("SFA") is the international trade association of the snack food industry representing snack manufacturers and suppliers to the snack

industry since 1937. Over 800 snack food manufacturers and suppliers are members of SFA. SFA acts as the voice for the snack food industry before government, compiles snack industry sales data and promotes increasing snack consumption, and provides technical support to its members through videos, seminars and publications. Retail sales of snack foods in the U.S. total more than $18 billion annually.

A core question in this case is whether Section 301 of the Labor Management Relations Act ("LMRA") preempts a claim under the Washington Minimum Wage Act ("WMWA") as it applies in the particular factual setting of unionized wholesale bakery driver-salespersons in Washington. This issue is of direct relevance and great concern to companies that distribute food and other consumer products. Members of the ABA, NAM and SFA distribute products in the State of Washington. In certain of these distribution arrangements, members of these organizations utilize compensation systems similar to that of the Petitioner, that are implemented in unionized work environments through collective bargaining agreements.

Indeed, in largely unionized sectors (e.g., the wholesale baking industry), the collectively bargained-for provisions at issue are nearly ubiquitous. As such, the outcome of this case will have serious and far-reaching effects on employers operating in the State of Washington. Moreover, through the extension of the incorrect analysis in the state court decision at issue, this case threatens to have a widespread impact nationally, in many sectors. It well may be disruptive of established systems of compensation in multiple jurisdictions. It certainly will impact a large number of collective bargaining relationships, and could result in changed methods of distribution in many parts of the country.

The decision of the Washington Court of Appeals calls into question the doctrine of LMRA preemption, and ignores critical aspects of the factual setting in this case. The compensation arrangement that is the subject of the Respondents' challenge resulted from extensive negotiations and consultation not only between the employees' representatives and the industry but also with the Washington State Department of Labor. The Washington Court of Appeals ignored this history when it effectively concluded that the Respondents' state law claims are *not* inextricably intertwined with the provisions of their collective bargaining agreements.

A definitive ruling from this Court on the correct application of the appropriate preemption analysis not only would resolve the dispute for the parties, but also would provide critical and necessary guidance nationally. As the Petitioner notes, uncertainties regarding the extent to which employers can rely on contractual provisions that structure exempt job duties can severely disturb otherwise harmonious labor relations.

This concern, however, and the impact of the State court ruling, extend well beyond driver-salespersons in the bakery industry, affecting any collective bargaining relationship in which the classification of employees is a critical factor. Consequently, the *Amici* and their member-companies have a keen interest in this Court's favorable action on the Petition for a Writ of Certiorari, to resolve questions that otherwise will face many parties in addition to the litigants directly interested in this proceeding.

INTRODUCTION AND SUMMARY OF ARGUMENT

Thirteen driver-salespersons[2] employed by Petitioner United States Bakery, Inc. d/b/a Snyder's Bakery, Inc. ("Snyder's"), have brought suit against Snyder's, claiming that they are due overtime compensation for hours worked over 40 in a week.

The terms and conditions of the Respondents' employment with Snyder's are governed by two collective bargaining agreements ("CBAs") negotiated between Snyder's and the Respondents' representative, the International Brotherhood of Teamsters ("Teamsters"). Among the provisions included in these agreements are clauses defining driver-salesperson job responsibilities, compensation structure, and rights. Among these are the right to seek redress of grievances that involve misclassification, rates of pay, and the like.

The relevant provisions of the CBAs at issue have been crafted carefully over years of negotiations. They reflect the parties' intent that driver-salesperson positions are structured as outside sales jobs exempt from overtime compensation, and provide a grievance mechanism for individuals who may feel their employment does not satisfy the commitment to outside salesperson status the contract guarantees them.

The Washington State trial court was presented with extensive evidence demonstrating how the collective

---

[2] The job position in question is referred to by various terms, including "salesman," "bakery salesman," "commission driver-salesman," "route salesman," "driver-salesperson," "route sales representative," "sales driver," "route sales driver," and "driver sales representative." For the sake of convenience and uniformity, the term "driver-salesperson" will be used to describe the position in which the Respondents are employed.

bargaining provisions at issue evolved. The history of negotiations over the driver-salesperson designation and job duties stretches back more than ten years. During the 1988 contract negotiations, the Teamsters chose to focus their attention on the status of driver-salespersons under the WMWA. The Teamsters made a concerted effort to consult with industry representatives regarding the duties that driver-salespersons performed, and the best ways to maximize their compensation and job satisfaction. Based on these consultations, industry and the Teamsters agreed that the driver-salespersons clearly functioned as "outside salespersons," as that term is defined under the WMWA, and the resulting CBA provisions reflected this agreement.

The State of Washington endorsed the agreement of the parties as well. On January 23, 1989, the Washington Department of Labor and Industry – the agency charged with enforcing the WMWA and which drafted the regulations governing outside salespersons – issued an opinion on the classification question. It stated that the driver-salespersons described in the CBAs were indeed "outside salespersons" under the WMWA, and were, therefore, exempt from the statute's overtime requirement. That opinion in essence validated the parties' interpretation of the compensation laws governing the position.

Subsequent contract negotiations in 1990-1991, 1992, and 1994-1999 worked from this understanding, and strengthened the outside sales provisions at issue by gearing driver-salesperson compensation and benefits toward incentive-based sales duties and away from hours-based compensation. During the 1990-1991 contract negotiations, in response to a letter from a Teamsters member, the Teamsters convened a meeting of representatives throughout Washington regarding this issue, and confirmed their understanding that the driver-salespersons described in the CBAs were exempt under the WMWA. In response to a

grievance, the Teamsters negotiated for driver-salespersons to be given additional sales time, and for industry support of the driver-salespersons in their efforts to increase the number of sales displays that retail outlets would allow them to erect. Finally, in 1992 the Teamsters negotiated to add a "route review" provision, under which driver-salespersons who felt their job duties did not leave them enough time to focus on generating new sales could have their routes and duties reviewed and adjusted by management and the Teamsters.

Contract negotiations from 1994-1999 further focused on the sales aspects of driver-salesperson positions, continuing to de-emphasize pay provisions related to hourly work. The Teamsters negotiated an increase in commissions for certain products in exchange for the elimination of so-called "premium" or "penalty" pay provisions, under which driver-salespersons were given additional compensation for hours worked in excess of 45 per week. The result was that the Respondents – like most driver-salespersons in the Washington wholesale bakery industry – are compensated with a fixed salary plus commissions.

In this way, the negotiations between the Teamsters and the Washington wholesale bakery industry, the resulting CBA provisions, and the rights accorded to driver-salespersons under the CBAs became inextricably intertwined with a determination of the driver-salespersons' exempt status under the WMWA.

Consequently, when the Respondents brought suit, Snyder's moved for summary judgment, on the ground that the suit necessarily involved an interpretation of the CBAs at issue and therefore was preempted by Section 301 of the LMRA. The Yakima County Superior Court granted Snyder's Motion for Summary Judgment, finding that federal labor law preempted the Respondents' state court action.

The Washington Court of Appeals reversed. In a four-page opinion reported at 976 P.2d 134 (1999), the court gave cursory consideration to Snyder's arguments. The Court of Appeals found first that the WMWA grants employees non-negotiable substantive rights. However, without analyzing whether those rights were implicated, the Court of Appeals concluded that the Respondents could assert their claims without reference to the relevant CBAs and that therefore, preemption was inappropriate. The Court of Appeals' decision appeared motivated by a concern that if it concluded Respondents' claims were preempted, they "would be forced to arbitrate in violation of public policy since these union employees would be deprived of rights afforded to their non-union counterparts."

Absent from the Court of Appeals' decision, however, was any discussion of the history of the collective bargaining agreement provisions involved. Also missing was any consideration of the extent to which an interpretation of those provisions is necessary to determine whether individuals employed in the position of driver-salesperson fall within the "outside salesperson" exemption to the WMWA. Also absent from the decision was any discussion of the extent to which the Respondents' claims involve allegations that their actual job duties conflicted with the job duties guaranteed to driver-salespersons in the CBAs, and the implications of Section 301 of the LMRA on such a claim. Finally, the court did not address the fact that union employees in exempt jobs are no more entitled to overtime under the WMWA than are their non-union counterparts, and that the only right at issue is the procedural, not substantive, right to bring suit in state court, as compared to the right to pursue the claim through an arbitral forum.

Snyder's timely filed a petition for review, which the Washington Supreme Court denied.

The *Amici* respectfully submit that the State court erred by failing to abide by the LMRA preemption principles recognized by this Court in a series of cases. The Washington State court failed to consider and recognize that the claims at issue are "inextricably intertwined" with the CBA, and that document – as well as the relevant bargaining history – is a necessary component for any resolution of the Respondents' claims.

It appears the Washington Court of Appeals erred in its analysis of the Respondents' claims, and that the decision will have a significant impact on a range of industries in the State of Washington, and possibly reverberate on employers, unions and employees in other jurisdictions as well. Indeed, the impact of the Washington State ruling extends well beyond the baking industry and driver-salespersons to the entire range of wage-hour exemptions that apply across industry, and that may be central to critical aspects of labor contract negotiations and union-management relations. Thus, a definitive and correct resolution of this preemption dispute is important to all parties to collective bargaining agreements.

This Court's decision on the Petition will have serious consequences – both in terms of financial and operational structure – because the ability to rely on negotiated job duties and their relation to exemption determinations will be drastically undermined if the Petition is denied. Accordingly, the *Amici* urge this Court to grant the Petition for a Writ of Certiorari, and reverse the decision below.

ARGUMENT

A. The Washington Court Of Appeals' Analysis of Whether Respondents' Claims Are Preempted By The LMRA Conflicts With Decisions of This Court.

1. Early Interpretations Of Section 301 Of The LMRA By This Court Established That State Law Claims May Be Preempted.

Section 301 of the LMRA provides that federal courts have jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce..." *See* 29 U.S.C. § 185(a) (1998).

In 1957, this Court held that Section 301 not only confers on the federal courts jurisdiction over controversies involving labor contracts, but also authorizes federal courts to craft a body of federal law for enforcement of collective bargaining agreements. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 450-51 (1957). According to this Court, Section 301 "expresses a federal policy that federal courts should enforce these agreements... and that industrial peace can be best obtained only in that way." *Id.* at 455. This Court acknowledged that state law compatible with the purpose of Section 301 may be applied, however, it "will not be an independent source of private rights." *Id.* at 457.

This Court first analyzed the preemptive effect of Section 301 in 1962. In *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), this Court held that in litigation within the purview of Section 301 "incompatible doctrines of local law must give way to principles of federal labor law." *Id.* at 102. This Court went on to hold that the Washington Supreme Court was incorrect to apply state contract law to a suit regarding enforcement of a collective

bargaining agreement. *Id.* at 103. Notably, the Court declared that

> State law which frustrates the effort of Congress to stimulate the smooth functioning of that process [of free and voluntary collective bargaining] thus strikes at the very core of federal labor policy.

Id. at 104.

In *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965), this Court held that Section 301 preempted a former employee's state law claim for severance pay. The employee had been covered by a collective bargaining agreement, but had failed to use its grievance and arbitration procedures provided therein. Significantly, the Court noted

> [P]ermit[ting] an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it...[a] rule creating such a situation would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.

Id. at 653 (*quoting Lucas Flour*, 369 U.S. at 103).

2. Recent Analyses Of Section 301 Preemption By This Court Establish That State Claims That Are "Inextricably Intertwined" With Labor Contract Terms Or Require Their Interpretation Are Preempted.

In 1985, this Court clarified the scope of the LMRA's preemption provision. In *Allis-Chalmers Corp. v. Lueck*,

471 U.S. 202 (1985), this Court set forth the appropriate standard of review, stating:

> Our analysis must focus . . . on whether the [state law] action . . . as applied here confers nonnegotiable state-law rights on employers or employees independent of any right established by contract, or, instead, whether evaluation of the [state law] claim is inextricably intertwined with consideration of the terms of the labor contract.

Id. at 213. This Court went on to hold that Lueck's tort claim against his employer was preempted by Section 301. Significantly, this Court noted that allowing the lawsuit to go forward in state court would allow

> Claims involving vacation or *overtime pay*, work assignment, unfair discharge – in short, the whole range of disputes traditionally resolved through arbitration – [to] be brought in state court... [and] sidestep available grievance procedures...

Id. at 219 (emphasis added).

Two years later, in *International Brotherhood of Electrical Workers v. Hechler*, 481 U.S. 851 (1987), this Court held that Section 301 preempted an employee's state law tort claim that she had suffered injuries because her union had breached its duty to provide her with a safe workplace. *Id.* at 862. According to this Court, preemption was necessary because a court deciding the employee's claim

> would have to ascertain, first, whether the collective-bargaining agreement in fact placed an implied duty of care on the Union to ensure

> that Hechler was provided a safe workplace, and, second, the nature and scope of that duty... Thus, as in *Allis-Chalmers*, it is clear that questions of contract interpretation... underlie any finding of tort liability.

Id. Noting the continuing need for federal uniformity in the interpretation of contract terms, this Court stated that the employee could not avoid preemption by characterizing her claim as a state law tort action. *Id.*

A few weeks later, this Court held that state law claims for breach of individual employment contracts were not preempted by Section 301. *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987). Though the employees were covered by a collective bargaining agreement, their claims were based on their individual contracts and neither relied upon the collective bargaining agreement nor addressed the relationship between the individual and collective agreements. *Id.* at 395. In an attempt to elucidate the scope of Section 301's preemptive effect, this Court stated

> Claims bearing no relationship to a collective-bargaining agreement beyond the fact that they are asserted by an individual covered by such an agreement are simply not pre-empted by Section 301.

Id. at 396 n.10.

The following year, in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988), this Court – reacting to an inappropriate interpretation of the "inextricably intertwined" standard by the Illinois Supreme Court – expanded on *Allis-Chalmers*, concluding that

> [A]n application of state law is preempted by [Section] 301 of the Labor Management

> Relations Act of 1947 only if such application requires the interpretation of a collective bargaining agreement.

Id. at 412. In a comment that anticipated this suit, this Court noted that

> [A] State could create a remedy that, although nonnegotiable, nonetheless turned on the interpretation of a collective bargaining agreement for its application. Such a remedy would be preempted by [Section] 301.

Id. at 407, n.7.

In 1990, this Court ruled that Section 301 preempted a state law wrongful death action brought by survivors of miners who had died in an underground fire. *United Steelworkers v. Rawson*, 495 U.S. 362 (1990). The basis for the action was an allegation that the union had been negligent in its performance of safety inspections. However, because the union participated in the inspections pursuant to the collective bargaining agreement, federal law governed the resolution of "questions relating to what the parties to a labor agreement agreed." *Id.* at 371 (*quoting Allis-Chalmers*, 471 U.S. at 211).

In *Livadas v. Bradshaw*, 512 U.S. 107 (1994), this Court held that a former employee's claim to enforce her right to be paid immediately upon discharge under California law was not preempted by Section 301. Specifically, the employer had not paid the employee until three days after her discharge and the employee sought to recover the penalty provided in the statute. Noting that the determination of whether any penalty was due would require reference to a calendar and not to the collective bargaining agreement, this Court determined that preemption was not appropriate. *Id.* at 125. Significantly, this Court stated that "[t]here was no

suggestion here that [the] union sought or purported to bargain away her protections under [that California statute]." *Id.*

Reviewing this body of case law, it is clear that if a plaintiff's claim in an action ostensibly premised on state law requires interpretation of a labor contract as to key terms, definitions and concepts relevant to the claim, it is preempted by Section 301. While certain rights arising under wage and hour statutes may not be waived by labor organizations, it also is clear that such asserted remedies may require interpretation of a collective bargaining agreement. That is true in the case at bar, and the Petition should be granted to consider – and to reverse – the extremely narrow reading the State appellate panel gave to this Court's directives in this important area.

3. The Washington Court of Appeals' Applied A Standard For Determining Section 301 Preemption Which Is Inconsistent With This Court's Decisions.

In the past four years, the Washington Court of Appeals has decided four cases involving Section 301 preemption and the application of the WMWA to unionized driver-salespersons. In each of the four cases, the court found that Section 301 did not preempt the plaintiffs' claims under the WMWA. *See Schneider*, 976 P. 2d 134 (1999); *United Food and Commercial Workers Union Local 1001 v. Mutual Benefit Life Ins. Co.*, 925 P.2d 212 (1996); *Ervin v. Columbia Distributing, Inc.*, 930 P.2d 947 (1997); *Huntley v. Frito-Lay, Inc.*, 979 P.2d 488 (1999).

In two of those cases, the Washington Court of Appeals (Division I) applied the following two-part standard:

> [F]ederal labor law does not preempt claims that are based on state laws when those laws

> grant employees nonnegotiable, substantive rights *and* when adjudication of those rights does not depend upon a collective bargaining agreement.

See United Food, 925 P.2d at 214 (*citing Livadas,* 512 U.S. 107 (1994); *Lingle*, 486 U.S. 399 (1988); *Allis-Chalmers*, 471 U.S. 202 (1985)); *Huntley*, 979 P.2d at 490.

However, in *Ervin* and in the instant case, the Washington Court of Appeals (Division III) examined only the first half of this test. The evident confusion within the Washington Court of Appeals as to the appropriate test for determining Section 301 preemption illustrates the need for definitive guidance from this Court.

In these cases, the court found dispositive the fact that the Respondents could assert their claims without relying on a specific term of the collective bargaining agreement. *See Ervin*, 930 P.2d at 951; *Schneider*, 976 P.2d at 136. By focusing solely on the question of whether the Respondents could assert their claims without relying on a specific term in the collective bargaining agreement, the court ignored the second – and in this case, crucial – line of inquiry: Is the Respondents' WMWA claim inextricably intertwined with consideration of the terms of the collective bargaining agreement? For if so, regardless of whether the claim could be asserted without the collective bargaining agreement, the claim is preempted. *See Allis-Chalmers*, 471 U.S. at 213.

Finally, in both *Ervin* and this case, the court found that, because a fact issue existed as to whether the driver-salespersons were "outside salespeople" under the WMWA, summary judgment on the question of Section 301 preemption was inappropriate. *See Ervin*, 930 P.2d at 953-54; *Schneider*, 976 P.2d at 138. This holding demonstrates that the court has misconstrued the preemption analysis,

because it is clear that this issue can be determined only by reference to the CBAs at issue. The Respondents' job duties, which are the determining factor in whether they qualify as exempt under the WMWA, are assigned according to the agreements negotiated by the Teamsters and Snyder's. Evaluating the specifics of those duties cannot be accomplished without interpreting the CBAs at issue. The two issues, indeed, are inextricably intertwined, and therefore, preemption is unavoidable.

B. The Washington Court Of Appeals Erred In Concluding That The Respondents Seek To Vindicate Non-Negotiable Rights Under The WMWA.

The Washington Court of Appeals' decision presumed, without analysis, that the Respondents' WMWA claim implicated non-negotiable rights guaranteed them by Washington law, and for that reason, preemption was inappropriate. Specifically, the court indicated that it believed that deferring to the arbitral process would deprive the Respondents of substantive rights to which their non-union counterparts are entitled under the WMWA. This conclusion is flawed. No individual has the right to a non-exempt position under the WMWA. Therefore, the Respondents' claim does not implicate a non-negotiable substantive right guaranteed to all Washington employees.

The Respondents are, in effect, challenging the provisions of the CBAs that define their job duties so as to render them exempt under the WMWA. The WMWA guarantees overtime pay to non-exempt employees, but does not and can not guarantee them non-exempt positions. Industry and labor *are* empowered to negotiate labor agreements in which employees' job duties will qualify as either exempt or nonexempt under the relevant wage and

hour laws. Snyder's arguments in support of preemption, therefore, do not suggest that it could agree, with the Teamsters, not to pay overtime to non-exempt employees in spite of the WMWA. To the contrary, preemption is appropriate because Respondents' claims directly challenge the decision of the parties to the CBA to structure their job duties as exempt.

The Respondents' challenge also effectively undermines the status of the certified collective bargaining agent as the "exclusive representative" of bargaining unit employees regarding wages, hours and other terms and conditions of employment. As this Court has noted, Section 9 of the National Labor Relations Act, 29 U.S.C. § 159, mandates that unit employees not bypass their collective bargaining agents in situations in which the "probability of strife and deadlock is high." *Emporium Capwell Co. v. Western Addition Community Org.*, 420 U.S. 50 (1975).

These are exactly the types of claims that Section 301 of the LMRA is intended to preempt: an effort by individual employees to circumvent the provisions of their collective bargaining agreement by claiming that a provision of state law negates the rights allocated in the collective bargaining process. *See Lucas Flour,* 369 U.S. at 103-04. A fundamental aspect of national labor policy is the commitment of certain issues and rights to the exclusive realm of Federal law, and to the arbitral process where called for by the collective bargaining agreement. *See Allis-Chalmers*, 471 U.S. at 213. The court's conclusion that preemption would violate public policy, therefore, is at odds with the strong national policy of encouraging parties to labor contracts to resolve their disputes through the grievance process. The court's conclusion that preemption would violate public policy was error.

This case does not present facts that justify any such conclusion. Here, to an extraordinary degree, the union contracts and the collective bargaining history reflected in the record play an obvious critical role in defining what the job is, and how it is performed appropriately. Reference to the CBAs and the bargaining history is required, without question, to determine the reasonably objective requirements of the job. Those sources are "inextricably intertwined" with the driver-salespersons' state law claim, and any resolution of their claim to overtime compensation clearly will be "substantially dependent" on an analysis of the CBAs and their evolution.

To suggest otherwise, as the Washington Court of Appeals did, is to advance the view that any and all statutory claims that might form the independent basis for a complaint inevitably survive Section 301 preemption analysis. This analysis apparently would apply regardless of the import or relation of the contract terms to the basic concepts inherent in the state law claim. In the view of the *Amici*, this perspective reflects a distorted reading of this Court's prior holdings regarding the scope of Section 301 preemption.

As noted above, the State court ruling – if allowed to stand – threatens to have a broad disruptive effect in many sectors, within the State of Washington and in other jurisdictions as well. There is a substantial likelihood that a large volume of labor contract negotiations that involve positions to which other overtime exemptions apply also will be destabilized. The roadmap to challenge well-established contractual compensation schemes (outside the grievance and arbitration machinery of otherwise applicable labor agreements) will be clear. Well-established bargaining histories will be ignored, and harmonious labor relations – created pursuant to the overall scheme of Federal regulation – will be disturbed.

CONCLUSION

For the above-stated reasons, the ABA, NAM and SFA respectfully urge this Court to grant review of this matter. This action is necessary to determine whether the Washington Court of Appeals erred in concluding that the Respondents' claims were not inextricably intertwined with an interpretation of the relevant CBAs. It also is warranted to examine whether the court erred, as a threshold matter, in assuming that Respondents' claims solely implicate non-negotiable substantive rights guaranteed in the WMWA.

This Court's granting of the Petition and its full consideration of the decision of the Washington State court is necessary to resolve compelling questions that threaten to have an immediate and dramatic impact on modes of compensation, and methods of distribution, for numerous products, in the State of Washington, and elsewhere.

Respectfully submitted,

PETER A. SUSSER
Counsel of Record
KATHERINE A. GOETZL
LITTLER MENDELSON, P.C.
1225 I Street, N.W.
Suite 1000
Washington, D.C. 20005
(202) 842-3400

Counsel for *Amici Curiae*
American Bakers Association
National Association of Manufacturers
Snack Food Association

Of Counsel:
JAN S. AMUNDSON
QUENTIN RIEGEL
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Penn. Ave., N.W.
Washington, D.C. 20004
(202) 637-3000

March 1, 2000